IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

MFA.No. 506 of 2001()

OPMV.1403/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT - PETITIONER:

PRAKASAN, S/O. KUNJAN,
KANNANCHIRAYIL HOUSE,
MULANTHURUTHY VILLAGE,
KARIKKODU KARA.

BY ADV. SRI.T.K.KOSHY
SRI.M.M.ALIAS

RESPONDENTS - RESPONDENTS:
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1. SANU JOSE, S/O. GEORGE JOSEPH, EDAPPANANGATTILL HOUSE, MULANTHURUTHY.

2. BABU, S/O. PATHROSE, KADAMPATTU VEETTIL, PAINUNKALAPARABHAGATH KANAYANNUR KARA, KANAYANNUR VILLAGE, MULANTHURUTHY.

3. NATIONAL INSURANCE CO., LTD., 27/XVI, MARKET JUNCTION, TRIPUNITHURA - 682 801.

BY ADV. SRI.P.JAYASANKAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 506 OF 2001

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Dated this the 19th day of December, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1403 of 1995 on the file of the Motor Accidents Claims Tribunal, Ernakulam, is the appellant. Appeal is filed against the award passed by the Tribunal fixing an amount of Rs.13,100/- as compensation on account of the injuries sustained by the petitioner. Petitioner sustained injuries in a motor vehicle accident occurred on 16.9.1994. He filed the claim petition impleading the owner, driver and Insurer of lorry bearing Reg. No.KL-7/E-1224. Owner and driver of the vehicle did not contest. Insurer alone contested the case. It was contended that there was no negligence on the part of the driver of the vehicle. Quantum of compensation claimed was disputed. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle. It further found that the vehicle was covered by a valid policy of insurance. The Tribunal directed the Insurer to pay the compensation awarded. Petitioner, contending that

the quantum of compensation awarded is highly inadequate, himself has filed this appeal.

2. I have carefully gone through the finding regarding the liability fastened on the driver as well as the Insurer. I do not find any reason to interfere with that finding and the same is confirmed. The next question arising for consideration is whether the appellant is entitled to get any additional compensation. Evidence on record shows that the appellant sustained head injury. The CT scan taken showed brain oedema. Appellant produced Exhibit A8 disability certificate issued by the doctor attached to the General Hospital, Ernakulam which shows that the appellant was suffering from recurrent right side headache, forgetfulness and abnormal behaviour. The doctor had certified that those symptoms are connected with the head injury sustained by the appellant. The Tribunal did not award any compensation taking into account of the serious nature of the injuries sustained by the appellant. In spite of Exhibit A8 certificate, the Tribunal had awarded only Rs.2,000/- for loss of amenities, enjoyment in life and discomforts, etc. The amount awarded by the Tribunal for

the injuries sustained, etc., is inadequate. Considering the nature of the injuries sustained, I am of the view that the appellant is to be given another opportunity to establish the exact compensation which he is entitled to. For that purpose, the case has to go back.

In the result, the appeal is allowed in part. The findings of the Tribunal regarding negligence of the driver and the liability of the Insurer to pay the compensation are confirmed. The quantum of compensation fixed by the Tribunal alone is set aside and the case is remanded to the Tribunal for redetermination of the compensation due to the appellant. It is open to both sides to adduce evidence, if so advised. Parties are directed to appear before the Tribunal on 22.1.2008.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 506 OF 2001

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J U D G M E N T

19TH DECEMBER, 2007